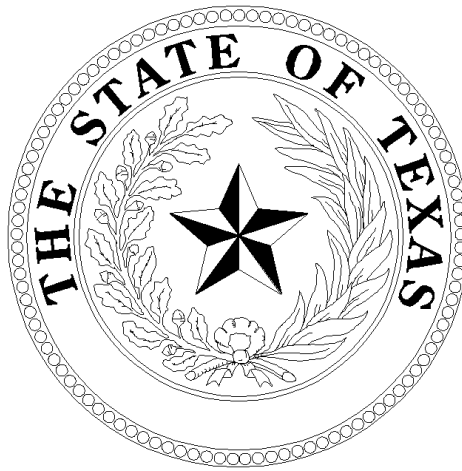


Texas Board of Occupational Therapy Examiners



Occupational Therapy Rules June, 2015

Adopted under the authority of Title 3, Subtitle H,
Chapters 452 and 454, Occupations Code

**Executive Council of
Physical Therapy and
Occupational Therapy Examiners**

Includes all revisions as of June 1, 2015.

Subject to further change by action of:
Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Legislature and the
Texas Board of Occupational Therapy Examiners.

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Rule Amendments and Adoptions

The Board's rule changes are posted on the agency's website when they are proposed for public comment and again when adopted. All comments are given to the Board.

Rule Changes made between June, 2012 and June, 2015:

- §362.1. Definitions.
- §364.1. Requirements for Licensure.
- §364.2. Initial License by Examination.
- §364.3. Temporary License.
- §364.4. Licensure by Endorsement.
- §367.1. Continuing Education.
- §367.2. Categories of Education.
- §367.3. Continuing Education Audit.
- §369.1. Display of Licenses.
- §369.3. Use of Titles.
- §370.1. License Renewal.
- §370.3. Restoration of a Texas License.
- §371.1. Inactive Status.
- §371.2. Retired Status
- §372.1. Provision of Services.
- §373.3. Supervision of an Occupational Therapy Assistant.
- §374.2. Detrimental Practice.
- §374.4. Code of Ethics.
- §376.4. Requirements for Registered Facilities.
- §376.6. Renewal of Registration Application.
- §376.8. Restoration of a Registration.
- §376.10. Change in Occupational Therapy Facility Ownership.
- §651.1. Occupational Therapy Board Fees.
- §651.3. Administrative Services Fees.

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TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

TITLE 40 SOCIAL SERVICES AND ASSISTANCE PART 12

CHAPTER 361 STATUTORY AUTHORITY

§361.1. Statutory Authority.

These rules are promulgated under the authority of the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851. These rules do not restate all the provisions of the Occupational Therapy Practice Act. The board makes decisions in the discharge of its statutory authority without regard to any person's race, creed, color, religion, sex, national origin, disability, or age.

Source Note: The provisions of this §361.1 adopted to be effective October 11, 1994, 19 TexReg 7712.

CHAPTER 362 DEFINITIONS

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

- (1) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.
- (2) AOTA--American Occupational Therapy Association.
- (3) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.
- (4) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).
- (5) Certified Occupational Therapy Assistant (COTA®)--An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.
- (6) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:
 - (A) A fine not to exceed \$4,000;
 - (B) Confinement in jail for a term not to exceed one year; or
 - (C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).
- (7) Client--The entity that receives occupational therapy. Clients may be individuals (including others involved in the individual's life who may also help or be served

indirectly such as caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(8) Complete Application--Notarized application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly and all other required documents.

(9) Complete Renewal--Contains renewal fee, renewal form with signed continuing education affidavit, home/work address(es) and phone number(s), and jurisprudence examination with at least 70% of questions answered correctly.

(10) Continuing Education Committee--Reviews and makes recommendations to the board concerning continuing education requirements and special consideration requests.

(11) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(12) Direct Contact--Refers to contact with the client which is face-to-face in person.

(13) Endorsement--The process by which the board issues a license to a person currently licensed in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification Examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.

(19) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(20) Investigation Committee--Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

(21) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the board.

(22) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners rules. This test is an open book examination with multiple choice or true-false questions. The passing score is 70%.

(23) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(24) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(25) NBCOT--National Board for Certification in Occupational Therapy.

(26) Non-licensed Personnel--OT Aide or OT Orderly or other person not licensed by this board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and close personal supervision.

(27) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which does not require the routine intervention of a physician.

(28) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(29) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(30) Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(31) Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL) instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including.

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

- (viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.
 - (ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.
 - (x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.
 - (xi) Driver rehabilitation and community mobility.
 - (xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.
 - (xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.
- (32) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).
- (33) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.
- (34) Occupational Therapy Practitioners--Occupational Therapists, and Occupational Therapy Assistants licensed by this board.
- (35) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).
- (36) Place(s) of Business--Any facility in which a licensee practices.
- (37) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant. Only a person holding a license from TBOTE may practice occupational therapy in Texas.
- (38) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.
- (39) Rules--Refers to the TBOTE Rules.

(40) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

Source Note: The provisions of this §362.1 adopted to be effective October 11, 1994, 19 TexReg 7712; amended to be effective January 1, 1996, 20 TexReg 10906; amended to be effective May 8, 1996, 21 TexReg 3714; amended to be effective March 5, 1997, 22 TexReg 1897; amended to be effective November 4, 1997, 22 TexReg 10747; amended to be effective October 25, 1998, 23 TexReg 10911; amended to be effective August 21, 2000, 25 TexReg 8062; amended to be effective October 16, 2000, 25 TexReg 10377; amended to be effective February 12, 2001, 26 TexReg 1346; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective December 27, 2001, 26 TexReg 10623; amended to be effective July 22, 2002, 27 TexReg 6545; amended to be effective November 15, 2004, 29 TexReg 10581; amended to be effective May 31, 2007, 32 TexReg 2877; amended to be effective December 21, 2008, 33 TexReg 10189; amended to be effective June 18, 2009, 34 TexReg 3982; amended to be effective October 6, 2013, 38 TexReg 6928.

CHAPTER 363 CONSUMER/LICENSEE INFORMATION

§363.1. Consumer/Licensee Information.

(a) The board prepares and provides without cost a Consumer Information Sign (in English and Spanish). The sign, or a reasonable facsimile of the sign, must be displayed in a location of public access at the place(s) of business of any board licensee.

(b) Board meetings are announced and conducted under the provisions of the Texas Open Meetings Act, Texas Government Code, §551 et seq.

(c) The board intends that the public have a reasonable opportunity to speak on issues that are under the jurisdiction of the board. The board reserves the authority to limit the length of public commentary.

(d) The licensee is responsible for being knowledgeable of Title 3, Subtitle H, Chapter 454 Occupations Code, the Occupational Therapy Practice Act, and of the Texas Board of Occupational Therapy Examiners' rules.

Source Note: The provisions of this §363.1 adopted to be effective January 9, 1995, 19 TexReg 10360; amended to be effective July 22, 2002, 27 TexReg 6545.

CHAPTER 364 REQUIREMENTS FOR LICENSURE

§364.1. Requirements for Licensure.

(a) All applicants for initial Texas licensure shall:

(1) submit a complete application form or online application with a recent passport-type color photograph of the applicant;

(2) submit a non-refundable application fee as set by the Executive Council;

(3) submit a successfully completed Board jurisprudence examination on the Texas Occupational Therapy Practice Act and Board rules;

- (4) have completed an accredited OT/OTA program;
 - (5) have completed supervised fieldwork experience, a minimum of 6 months for OT and 2 months for OTA; and
 - (6) either meet the requirements in §364.2 of this title (relating to Initial License by Examination) and apply by examination or meet the requirements in §364.4 of this title (relating to Licensure by Endorsement) and apply by endorsement.
- (b) The applicant must also meet the requirements in §364.2 of this title and apply by examination if the applicant:
- (1) has not passed the NBCOT certification examination; or
 - (2) has passed the NBCOT certification examination and
 - (A) is not currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or
 - (B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.
- (c) The applicant must also meet the requirements in §364.4 of this title and apply by endorsement if the applicant has passed the NBCOT certification examination and:
- (1) is currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or
 - (2) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.
- (d) For applicants who are active U.S. military service members or U.S. veterans, any military service, training or education verified and credited by an accredited OT or OTA program is acceptable to the Board. Applicants who are U.S. active duty military service members and their spouses shall receive expedited services from the Board. Applicants shall mail or fax a copy of the Uniformed Services Military ID Card and notify the Board of their military affiliation.
- (e) An application for license is valid for one year after the date it is received by the Board. At the end of the year, the application fee must be paid to continue the application process for the second year. The process will then continue under the terms of the original application.
- (f) An applicant who submits an application containing false information may be denied a license by the Board.
- (g) Should the Board reject an application for license, the reasons for the rejection will be communicated in writing to the applicant. The applicant may submit additional information and

request reconsideration by the Board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act.

(h) Applicants and licensees must notify the Board in writing of changes in name, residential address, mailing address, email address, and work address within 30 days of the change. The address of record is the information provided to the public. Until licensees select an address of record, the business address will be used as the default. If no business address is available, the mailing address will be used. If no alternate address is available, the home address will be used. Applicants and licensees may update this information at any time.

(i) The Board will issue a replacement copy of a license to replace one lost or destroyed upon receipt of a written request and the appropriate fee from the licensee. For a name change, the appropriate fee and a copy of the legal document (e.g. marriage certificate, divorce decree) enacting the name change must accompany the request.

(j) The first regular license is valid from the date of issuance until the last day of the applicant's birth month, with a duration of at least two years.

(k) Licensees will follow the rules for continuing education, as described in Chapter 367 of this title (relating to Continuing Education).

Source Note: The provisions of this §364.1 adopted to be effective February 12, 2001, 26 TexReg 1347; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective July 22, 2002, 27 TexReg 6545; amended to be effective May 31, 2007, 32 TexReg 2879; amended to be effective September 7, 2009, 34 TexReg 6123; amended to be effective December 2, 2013, 38 TexReg 8681; amended to be effective June 1, 2015, 40 TexReg 3197.

§364.2. Initial License by Examination.

(a) An applicant applying for license by examination must:

- (1) meet all provisions of §364.1 of this title (relating to Requirements for a License);
- (2) submit a copy of the receipt showing that an NBCOT score report has been ordered for the Board; and
- (3) pass the NBCOT certification examination for occupational therapists or occupational therapy assistants with a score set by NBCOT. Score reports must be sent directly to the Board by NBCOT.

(b) The application for license must be received no later than two years following the date of the passing examination. If the application is received after this time, the applicant must take and pass the NBCOT examination for licensure purposes only. The applicant must request Board approval to take this examination and submit a copy of the receipt showing that an NBCOT score report has been ordered for the Board. The score report must be sent directly to the Board by NBCOT.

(c) An applicant who fails an examination may take additional examinations by sending in the appropriate fee with the Board's re-exam form.

(d) An applicant with a history of licensure in occupational therapy must submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or

previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board.

(e) Previous Texas licensees are not eligible for Initial License by Examination.

Source Note: The provisions of this §364.2 adopted to be effective February 12, 2001, 26 TexReg 1347; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective January 9, 2012, 37 TexReg 68; amended to be effective June 1, 2015, 40 TexReg 3197.

§364.3. Temporary License.

(a) The Board may only issue a temporary license to an applicant who is taking the NBCOT certification examination for the first time.

(b) Temporary Licensure is not available to applicants who have received a license in any state or territory of the U.S. or another country as an occupational therapy practitioner or to applicants applying from the U.S. military or a non-licensing state or territory of the U.S. who have had occupational therapy employment for at least two years immediately preceding application for a Texas license, unless it was as a certified occupational therapy assistant (COTA) or an occupational therapy assistant (OTA), and they now meet the requirements for a temporary license as an OT. In this section, "occupational therapy practitioner" means an individual licensed as an occupational therapist or occupational therapy assistant in any state or territory of the U.S.

(c) To be issued a temporary license, the applicant must:

- (1) meet all provisions of §364.1 of this title (relating to Requirements for a License);
- (2) meet all provisions of §364.2 of this title (relating to License by Examination);
- (3) submit the Confirmation of Examination Registration and Eligibility to Examine form from NBCOT, which must be sent directly to the Board by NBCOT and which reflects the 90 day window in which the applicant will take the examination;
- (4) submit a signed Verification of Supervision Form as provided by the Board; and
- (5) send the Board the temporary license fee as set by the Executive Council.

(d) If the applicant fails the examination, fails to take the examination during the 90 day window as stated on the Confirmation of Examination Registration and Eligibility to Examine form from NBCOT, or fails to have the score reported, the temporary license is void and must be returned to the Board. An additional temporary license will not be issued.

(e) A temporary license shall be valid no longer than 180 days.

Source Note: The provisions of this §364.3 adopted to be effective February 12, 2001, 26 TexReg 1347; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective July 22, 2002, 27 TexReg 6545; amended to be effective September 7, 2009, 34 TexReg 6123; amended to be effective January 9, 2012, 37 TexReg 68; amended to be effective June 1, 2015, 40 TexReg 3197.

§364.4. Licensure by Endorsement.

(a) The Board may issue a license by endorsement to applicants who have passed the NBCOT certification examination and are either currently licensed in another state or territory of the

United States which has licensing requirements substantially equivalent to this state or, if not currently licensed in a state or territory of the U.S., are applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license. Previous Texas licensees are not eligible for Licensure by Endorsement. An applicant seeking licensure by endorsement must:

(1) meet all provisions of §364.1 of this title (relating to Requirements for Licensure);

(2) arrange to have NBCOT send directly to the Board the applicant's NBCOT certification examination score report (or for applicants examined prior to 1986, a Verification of Certification form); and

(3) submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board. If the applicant is not currently licensed in a state or territory of the U.S. and is applying from the U.S. military or a non-licensing state or territory of the U.S., a Verification of Employment form must be submitted substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license.

(b) Provisional License: The Board may grant a Provisional License to an applicant who is applying for licensure by endorsement if there is an unwarranted delay in the submission of required documentation outside the applicant's control. All other requirements for licensure by endorsement must be met. The applicant must also submit the Provisional License fee as set by the Executive Council. The Board may not grant a provisional license to applicants with disciplinary action in their license history or to applicants with pending disciplinary action. The Provisional License will have a duration of 180 days.

Source Note: The provisions of this §364.4 adopted to be effective February 12, 2001, 26 TexReg 1347; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective October 20, 2002, 27 TexReg 9626; amended to be effective February 12, 2004, 29 TexReg 1227; amended to be effective June 18, 2009, 34 TexReg 3982; amended to be effective June 1, 2015, 40 TexReg 3197.

CHAPTER 367 CONTINUING EDUCATION

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy and meet the definition of Type 1 or Type 2 as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements.

(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license, and provide this information as requested.

(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(d) Types of Continuing Education.

(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with patients or clients hereafter referred to as Type 2.

(A) Type 2 courses teach occupational therapy evaluation, assessment, intervention or prevention and wellness with patients or clients.

(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.

(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, pharmacology, quality improvement, administration, reimbursement and other occupational therapy related subjects.

(e) Specific continuing educational activities may be counted only one time in the licensee's career unless content has been updated or revised.

(f) Effective January 1, 2003, Type 1 and Type 2 educational activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the board. The board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

(g) Licensees are responsible for choosing Type 1 or Type 2 CE according to the definitions in this section.

Source Note: The provisions of this §367.1 adopted to be effective October 11, 1994, 19 TexReg 7714; amended to be effective January 1, 1996, 20 TexReg 10907; amended to be effective February 2, 1999, 24 TexReg 606; amended to be effective February 3, 2000, 25 TexReg 818; amended to be effective August 21, 2000, 25 TexReg 8063; amended to be effective July 22, 2001, 26 TexReg 5441; amended to be effective January 1, 2003, 27 TexReg 12015; amended to be effective October 27, 2003, 28 TexReg 9291; amended to be effective August 29, 2006, 31 TexReg 6801; amended to be effective May 31, 2007, 32 TexReg 2880; amended to be effective February 25, 2008, 33 TexReg 1603; amended to be effective February 14, 2013, 38 TexReg 676.

§367.2. Categories of Education.

(a) All continuing education must comply with Type 1 or Type 2 as outlined in §367.1 of this title (relating to Continuing Education). Continuing education undertaken by a licensee for renewal shall be acceptable if it falls in one or more of the following categories.

(1) Formal academic courses related to occupational therapy.

(A) Completion of course work at or through an accredited college or university shall be counted as follows: three CE hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a three-credit course counts for 9 contact hours of continuing education. All college course work must comply with Type 1 and Type 2 as outlined in §367.1 of this title, no maximum. Documentation of this type of CE credit shall include a transcript from the accredited college or university.

(B) Creation of a new course at or through an accredited college or university may be counted for 10 hours maximum. Proof of this type of CE shall be a letter from the Program Director.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, and conferences in occupational therapy with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation of this type of CE credit shall include a certificate of completion or letter of verification.

(3) Development of publications, media materials or research/grant activities per two year renewal period: Documentation of this type of CE credit shall include a copy of the actual publication or media material(s), or title page and receipt of grant proposal.

(A) Published scholarly work in a peer-review journal:

(i) Primary or second author, 15 hours maximum.

(ii) Other author, consultant, reviewer, or editor, 5 hours maximum.

(B) Grant or research proposals accepted for consideration:

(i) Principal investigator or co-principal investigator, 10 hours maximum.

(ii) Consultant or reviewer, 4 hours maximum.

(C) Published book:

(i) Primary author or book editor, 15 hours maximum.

(ii) Second or other author, 7 hours maximum.

(iii) Consultant or reviewer, 5 hours maximum.

(D) Published book chapter or monograph:

(i) Primary author, 7 hours maximum.

(ii) Second or other author, consultant, reviewer, or editor, 2 hours maximum.

(E) Author, consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, 2 hours maximum.

(F) Developer of practice-related or instructional materials using alternative media such as video, audio, or software programs or applications to advance the professional skills of others (not for proprietary use), 15 hours maximum.

(4) Home study courses, educational teleconferences, Internet-based courses, and video instruction, no maximum.

- (A) Courses must fit the criteria for continuing education for Type 1 or Type 2.
 - (B) These courses must have:
 - (i) Specified learning objectives;
 - (ii) A post-test; and
 - (iii) A certificate of completion.
 - (C) Educational teleconferences or Internet courses must reflect a pre-determined number of credit hours.
- (5) Professional presentations by licensee: Documentation of this type of CE credit shall include a letter of verification of presentation and number of hours for the presentation or copy of organization's brochure or conference guide noting the presentation, presenter(s), type of presentation (i.e.: 2 hour poster, 3 hour workshop).
- (A) Professional presentation, e.g. in-services, workshops, institutes: Any presentation counted only one time. Hour for hour credit. 10 hours maximum.
 - (B) Community/Service organization presentation: Any presentation counted once. Hour for hour credit. 10 hours maximum.
- (6) Fieldwork Supervision: 10 hours maximum, Type 2.
- (A) A licensee may earn 2 contact hours for each Level 1 student supervised:
 - (i) 40 hours of Level 1 equals 1 hour of CE; or
 - (ii) 80 hours of Level 1 equals 2 hours of CE.
 - (B) A licensee may earn 8 contact hours for each Level 2 student supervised:
 - (i) 8 weeks equals 6 hours of CE; or
 - (ii) 12 weeks equals 8 hours of CE.
 - (C) A licensee may earn a maximum of 10 contact hours for student supervision per renewal period.
 - (D) Fieldwork supervision hours may be evenly divided between licensees, not to exceed two fieldwork educators per student.
 - (E) Fieldwork education supervision must be completed before the licensee's renewal date.
 - (F) Documentation of this type of CE credit shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the

completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

(G) Courses specific to fieldwork education are counted as Type 1.

(7) Mentorship:

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S. Supervision hours as per §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant) are not eligible for continuing education hours.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee: A licensee may earn one hour of CE for each 3 hours spent in activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 CE hours.

(D) Participation as Mentor: A licensee may earn one hour of CE for each 5 hours spent in activities as a mentor up to a maximum of 10 CE hours.

(8) Participation in volunteer activities related to occupational therapy including service on a committee, board, or commission of a state occupational therapy association, AOTA, NBCOT, or TBOTE for the purpose of tangible outcomes such as official documents, publications, and official reports. Documentation of this type of CE credit shall include a copy of the actual publication or official document/report which reflects the licensee's name. This type of CE is counted at Type 1. Maximum of 10 contact hours.

(9) Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60 days prior to expiration of the license.

(b) Unacceptable Continuing Education Activities include but are not limited to:

(1) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(2) Business meetings.

(3) Exhibit hall attendance.

(4) Reading journals.

(5) Courses such as, but not limited to: grant writing, massage therapy, general management and business, social work, defensive driving, water safety, team building, leadership, GRE, GMAT, MCAT preparation, general cooking classes, reading techniques, geriatric anthology, general foreign languages, communicable diseases, patient abuse, disposal of hazardous waste, patient privacy, CPR, HIPAA, FERPA, bloodborne pathogens, or similar courses, do not count toward continuing education.

(6) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

Source Note: The provisions of this §367.2 adopted to be effective July 22, 2001, 26 TexReg 5441; amended to be effective August 29, 2006, 31 TexReg 6801; amended to be effective May 31, 2007, 32 TexReg 2880; amended to be effective June 18, 2009, 34 TexReg 3983; amended to be effective March 21, 2010, 35 TexReg 2313; amended to be effective June 7, 2012, 37 TexReg 4068; amended to be effective February 14, 2013, 38 TexReg 676; amended to be effective December 2, 2013, 38 TexReg 8682; amended to be effective September 28, 2014, 39 TexReg 7782; amended to be effective June 1, 2015, 40 TexReg 3198.

§367.3. Continuing Education Audit.

(a) The board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification. Audit documentation submitted must be identified by the licensee to specify whether they are Type 1 or Type 2.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes, or a total of four years.

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, and certificates of completion.

(e) Documentation must identify the licensee by name and license number, and must include the date and title of the course, the signature of the authorized signer, and the number of CEUs or contact hours awarded for the course.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

Source Note: The provisions of this §367.3 adopted to be effective July 22, 2001, 26 TexReg 5441; amended to be effective August 29, 2006, 31 TexReg 6801; amended to be effective February 14, 2013, 38 TexReg 676; amended to be effective September 28, 2014, 39 TexReg 7782.

CHAPTER 368 OPEN RECORDS

§368.1. Open Records.

(a) Open Records Requests. Inspection of Public Records under the Texas Open Records Act, Texas Civil Statutes, Article 8890, §9(c) and (d), provide that all of the records of the board are public records and are available for public inspection during normal business hours except that investigative files and records of the board are confidential. In addition, the exceptions to disclosure in Texas Civil Statutes, Article 6252-17a, may protect certain information. This rule is promulgated pursuant to Article 6252-17a to establish a records review process that is efficient, safe, and timely to the public and to the agency.

- (1) Requests must be in writing and reasonably identify the records requested.
- (2) Records access will be by appointment only.
- (3) Records access is available only during the regular business hours of the agency.
- (4) Unless confidential information is involved, review may be by physical access or by duplication at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will be provided the option of receiving copies. Costs of duplication shall be the responsibility of the requesting party in accordance with the established board fee policy, payable at the time of receipt of records, if in person; or in advance, if by mail. The board may, in its discretion, waive fees if it is in the public interest to do so.
- (5) When the safety of any public record is at issue, physical access may be denied and the records will be provided by duplication as previously described.
- (6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e.g., court order.
- (7) All open records request appointments will be referred to the executive director or designee before complying with a request.
- (8) The open records coordinator for the agency is the executive director and the alternate is the director's designee.

(b) Charges for Copies of Public Records. The charge to any person requesting reproductions of any readily available record of the Texas Board of Occupational Therapy Examiners will be the charges established by the General Services Commission.

(c) The board may waive these charges if there is a public benefit. The executive director of the Executive Council of Physical Therapy and Occupational Therapy Examiners is authorized to determine whether a public benefit exists on a case-by-case basis.

Source Note: The provisions of this §368.1 adopted to be effective October 11, 1994, 19 TexReg 7715.

CHAPTER 369 DISPLAY OF LICENSES

§369.1. Display of Licenses.

(a) Licenses must be displayed in accordance with the Act, §454.214.

(b) The original license must be prominently displayed in the licensee's principal place of business as designated by the licensee. The wallet-sized license must be carried by the licensee when in other practice settings. Reproduction of the original license is only authorized for institutional file purposes and not for public display.

(c) A licensee shall not make any alteration(s) on a license.

Source Note: The provisions of this §369.1 adopted to be effective October 11, 1994, 19 TexReg 7715; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective June 10, 2012, 37 TexReg 4068.

§369.2. Changes of Name or Address of Licensees.

(a) A licensee or applicant shall notify the board in writing of changes in name, residential and/or primary business address and/or supervisor within 30 days of such change(s). A copy of a marriage license, court decree, or divorce decree evidencing a change in name must be submitted by the licensee or applicant with any written notification in a change in name.

(b) Failure to provide the changes requested in subsection (a) of this section may cause a licensee to be subject to disciplinary action.

Source Note: The provisions of this §369.2 adopted to be effective October 11, 1994, 19 TexReg 7715; amended to be effective January 1, 1996, 20 TexReg 10907.

§369.3. Use of Titles.

(a) A licensed occupational therapist shall use the title occupational therapist or the initials OT. OTR® is an alternate term for OT if an individual who is licensed by this board takes the responsibility for ensuring that he or she is qualified to use it by maintaining certification through NBCOT.

(b) A licensed occupational therapy assistant shall use the title occupational therapy assistant or the initials OTA. COTA® is an alternate term for OTA if an individual who is licensed by this board takes the responsibility for ensuring that he or she is qualified to use it by maintaining certification through NBCOT.

(c) No other titles or initials are conferred for a license from this board.

(d) Except when practicing as an occupational therapy practitioner in a higher education setting or when signing as an author for a publication, and that publication requires a recognized publication format, any letters designating other titles, academic degrees, or certifications must follow the initials OT or OTA (example John Doe, OT, CHT or Jane Doe, OTR, PhD).

(e) Limitations. A person who does not hold a license to practice occupational therapy in Texas may not use any of the following terms in conjunction with their business, work, or services:

(1) "occupational therapist," "licensed occupational therapist," "occupational therapist, registered;"

- (2) "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant;"
- (3) "OT," "OTR," "LOT," "OTR/L;"
- (4) "OTA," "LOTA," "COTA," "COTA/L;" or
- (5) any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant.

Source Note: The provisions of this §369.3 adopted to be effective October 11, 1994, 19 TexReg 7715; amended to be effective May 8, 1996, 21 TexReg 3715; amended to be effective November 4, 1997, 22 TexReg 10750; amended to be effective September 7, 2009, 34 TexReg 6123; amended to be effective August 19, 2010, 35 TexReg 7082; amended to be effective January 9, 2012, 37 TexReg 68; amended to be effective October 6, 2013, 38 TexReg 6930.

CHAPTER 370 LICENSE RENEWAL

§370.1. License Renewal.

(a) Licensee Renewal. Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license. The licensee's expiration date is displayed on the board's website and should be considered evidence of current licensure. Licensees and employers should verify licenses and registrations on the board's website.

(1) General Requirements. The renewal application is not complete until the board receives all required items. The components required for license renewals are:

- (A) signed renewal application form, or online equivalent verifying completion of 30 hours of continuing education, as per Chapter 367 of this title (relating to Continuing Education);
- (B) the renewal fee and any late fees which may be due;
- (C) a passing score on the online jurisprudence exam;
- (D) any additional forms the board may require; and
- (E) the licensee's physical address, any work address, other mailing address, email, and a chosen address of record. The address of record is the address that will be shared with the public. Until licensees select an address of record, the business address will be used as the default. If no business address is available, the mailing address will be used. If no alternate address is available, the home address will be used.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) Online Renewal. Licensees may submit and pay for their renewal but the renewal process is not complete until the board's website verification reflects the renewal date.

(A) Licensees who do not have a Social Security Number on file will be unable to renew online.

(B) Licensees who are inactive status, or who wish to change their current status must renew with a paper application before the expiration date.

(C) Licensees who want to change their name on their license must submit a copy of court documents with the new name. Changing the wall license requires a replacement license fee.

(b) Restrictions to Renewal/Restoration.

(1) The board will not renew a license if a licensee has defaulted with the Texas Guaranteed Student Loan Corporation (TGS LC). Upon notice from TGS LC that a repayment agreement has been established, the license shall be renewed.

(2) The board will not renew a license if the licensee has defaulted on a court or attorney general's notice of child support. Upon receipt that repayment has been established, the license shall be renewed.

Source Note: The provisions of this §370.1 adopted to be effective October 11, 1994, 19 TexReg 7716; amended to be effective January 1, 1996, 20 TexReg 10908; amended to be effective May 8, 1996, 21 TexReg 3715; amended to be effective November 4, 1997, 22 TexReg 10751; amended to be effective October 25, 1998, 23 TexReg 10912; amended to be effective February 12, 2001, 26 TexReg 1348; amended to be effective July 22, 2001, 26 TexReg 5442; amended to be effective October 27, 2003, 28 TexReg 9291; amended to be effective December 4, 2005, 30 TexReg 7891; amended to be effective May 31, 2007, 32 TexReg 2880; amended to be effective June 10, 2012, 37 TexReg 4069; amended to be effective December 2, 2013, 38 TexReg 8682.

§370.2. Late Renewal.

(a) A renewal application is late if all required materials are not postmarked prior to the expiration date of the license. Licensees who do not complete the renewal process prior to the expiration date are subject to late fees as described. Likewise a renewal completed online must be date and time stamped prior to the expiration date or it is late and subject to late fees as described.

(1) If the license has been expired for 90 days or less, the person may renew the license by:

(A) submitting the renewal fee and the board approved late fee; and

(B) reporting completion of the required number of contact hours of Continuing Education.

(2) If the license has been expired for more than 90 days, but less than one year, the person may renew the license by:

(A) submitting the renewal fee and the board approved late fee; and

(B) providing copies of continuing education activities and completing the CE submission form.

(b) Military Service.

(1) If a reserve status licensee is called into active military service, and his or her license expires during service, the licensee may follow the requirements for renewal with no penalty if the licensee:

(A) submits the renewal within 90 days after return to reserve status;

(B) submits evidence of active service and its inclusive dates.

(2) A reserve status licensee who is called into active military service will have 6 additional months after release from active military service to submit proof of completion of the 30 required CE hours as per Chapter 367 of the this title (relating to Continuing Education).

Source Note: The provisions of this §370.2 adopted to be effective May 31, 2007, 32 TexReg 2880; amended to be effective June 18, 2009, 34 TexReg 3983; amended to be effective January 1, 2010, 34 TexReg 8968; amended to be effective November 28, 2010, 35 TexReg 10235.

§370.3. Restoration of a Texas License.

(a) Restoration of a license expired more than one year to a person with a current license or occupational therapy employment:

(1) The Board may restore a license to a person whose Texas license has been expired more than one year if the person:

(A) is currently licensed in another state or territory of the U.S. and that license has not been suspended, revoked, cancelled, surrendered or otherwise restricted for any reason; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) make application for licensure to the Board on a form prescribed by the Board, which includes a recent passport-type photo;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board. If not currently licensed in another state or territory of the U.S. and applying from the U.S. military or a non-licensing state or territory of the U.S., the person must submit a Verification of Employment form substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license;

(C) pass the Board jurisprudence exam;

(D) pay the restoration fee; and

- (E) complete all requirements for licensure within one year from the date of application.
- (b) Restoration of a license expired more than one year and less than two years to a person without a current license or occupational therapy employment:
- (1) The Board may restore a license expired more than one year and less than two years to a person who was licensed in Texas and:
- (A) is not currently licensed in another state or territory of the U.S.; or
- (B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.
- (2) The person shall meet the following requirements:
- (A) make application for licensure to the Board on a form prescribed by the Board, which includes a recent passport-type photo;
- (B) submit copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education) with a minimum of 30 hours in Type 2;
- (C) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;
- (D) pass the Board jurisprudence examination;
- (E) pay the restoration fee; and
- (F) complete all requirements for licensure within one year from the date of the application.
- (c) Restoration of a license expired more than two years to a person without a current license or occupational therapy employment:
- (1) The Board may restore a license expired more than two years to a person who was licensed in Texas and:
- (A) is not currently licensed in another state or territory of the U.S.; or
- (B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.
- (2) The person shall meet the following requirements:

- (A) make application for licensure to the Board on a form prescribed by the Board, which includes a recent passport-type photo;
- (B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;
- (C) pass the Board jurisprudence exam;
- (D) pay the restoration fee;
- (E) complete all requirements for licensure within one year from the date of application; and
- (F) satisfy one of the following:
 - (i) complete a re-entry course through an accredited college or university and submit the certificate of completion or transcript to the Board;
 - (ii) obtain an advanced or post-professional occupational therapy degree, with an official transcript sent to the Board; or
 - (iii) take and pass the NBCOT examination for licensure purposes only (after requesting Board approval to take the examination) and have the passing score reported to the Board directly by NBCOT. In addition, copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education), with a minimum of 30 hours in Type 2, must be submitted.

Source Note: The provisions of this §370.3 adopted to be effective November 28, 2010, 35 TexReg 10235; amended to be effective January 9, 2012, 37 TexReg 69; amended to be effective June 1, 2015, 40 TexReg 3198.

CHAPTER 371 INACTIVE AND RETIRED STATUS

§371.1. Inactive Status.

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the board. The board may allow an individual who is not actively engaged in the practice of occupational therapy to put a license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years, and may not represent him or herself as an Occupational Therapist or Occupational Therapy Assistant.

(b) Required components to put a license on inactive status are:

- (1) Signed renewal application form documenting completion of the required continuing education as described in Chapter 367 of this title; and
- (2) The inactive fee and any late fees which may be due.

- (3) A passing score on the online jurisprudence exam.
- (c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:
 - (1) Signed renewal application form, documenting completion of the required continuing education as described in Chapter 367 of this title; and
 - (2) The renewal fee and any late fees which may be due.
 - (3) A passing score on the online jurisprudence exam.
- (d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time after the licensee has submitted a complete application for reinstatement. The components required to return to active status are:
 - (1) Signed paper renewal application form;
 - (2) The renewal fee and any late fees which may be due;
 - (3) A passing score on the online jurisprudence exam; and
 - (4) Proof of the required continuing education, if required.
- (e) If the licensee has not completed the required continuing education, he or she may follow the methods to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).

Source Note: The provisions of this §371.1 adopted to be effective October 11, 1994, 19 TexReg 7716; amended to be effective May 8, 1996, 21 TexReg 3716; amended to be effective November 4, 1997, 22 TexReg 10751; amended to be effective October 25, 1998, 23 TexReg 11167; amended to be effective February 3, 2000, 25 TexReg 818; amended to be effective May 20, 2001, 26 TexReg 3494; amended to be effective June 10, 2012, 37 TexReg 4069.

§371.2. Retired Status.

- (a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.
 - (1) "voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some Chambers of commerce, and volunteer centers certified by the Department of Public Safety.
 - (2) "compensation" means direct or indirect payment of anything of monetary value.

- (3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).
- (b) To be eligible for retired status, a licensee must hold a current license on active or inactive status.
- (c) Requirements for initial retired status are:
- (1) a completed and notarized application form;
 - (2) a passing score on the online jurisprudence exam;
 - (3) the completed continuing education for the current renewal period; and
 - (4) the retired status fee and any late fees which may be due.
- (d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:
- (1) the retired status renewal form;
 - (2) a passing score on the online jurisprudence exam;
 - (3) the retired renewal fee and any late fee which may be due; and
 - (4) completion of 6 hours of Type 2 continuing education each license renewal period, as described in §367.1 of this title (relating to Continuing Education).
- (e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the regular license renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal). A licensee who has been on retired status for more than one year must follow the procedures for §370.3 of this title (relating to Restoration of Texas License.)
- (f) The occupational therapy practitioner may continue to renew the retired status license indefinitely
- (g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).
- (h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

Source Note: The provisions of this §371.2 adopted to be effective August 29, 2006, 31 TexReg 6801; amended to be effective September 7, 2009, 34 TexReg 6124; amended to be effective June 10, 2012, 37 TexReg 4069.

CHAPTER 372 PROVISION OF SERVICES

§372.1. Provision of Services.

(a) Medical Conditions.

- (1) Occupational therapists may evaluate the patient/client to determine the need for occupational therapy services without a referral.
- (2) Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.
- (3) The referral may be an oral or signed written order. The occupational therapy practitioner must ensure that all oral orders are followed with a signed written order.
- (4) If a written referral signed by the referral source is not received by the third treatment or within two weeks from the receipt of the oral referral, whichever is later, the therapist must have documented evidence of attempt(s) to contact the referral source for the written referral (e.g., registered letter, fax, certified letter, email, return receipt, etc.). The therapist must exercise professional judgment to determine cessation or continuation of treatment with a receipt of the written referral.

(b) Non-Medical Conditions.

- (1) Consultation, monitored services, and evaluation for need of services may be provided without a referral.
- (2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or treatment process when necessary to insure the safety and welfare of the consumer.

(c) Screening. A screening may be performed by an occupational therapy practitioner.

(d) Evaluation.

- (1) Only an occupational therapist may perform the evaluation.
- (2) An occupational therapy plan of care must be based on an occupational therapy evaluation.
- (3) The occupational therapist must have face-to-face, real time interaction with the patient or client during the evaluation process.
- (4) The occupational therapist may delegate to an occupational therapy assistant or temporary licensee the collection of data for the assessment. The occupational therapist is responsible for the accuracy of the data collected by the assistant.

(e) Plan of Care.

- (1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for anyone other than the evaluating or treating occupational therapist to dictate, or attempt to dictate,

when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the patient should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) The occupational therapist and an occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist. Revisions to the plan of care and goals must be documented by the occupational therapist and/or occupational therapy assistant to reflect revisions at the time of the change.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) The occupational therapy practitioners must have face-to-face, real time interaction with the patient or client during the intervention process.

(8) Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant or temporary licensee tasks that they both agree are within the competency level of that occupational therapy assistant or temporary licensee.

(f) Documentation.

(1) The patient's/client's records include the medical referral, if required; and the plan of care. The plan of care includes the initial examination and evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes, any re-evaluations, if required; any written communication and the discharge documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) The occupational therapy assistant must include the name of his or her available supervising occupational therapist in each intervention note. If there is not a current supervising occupational therapist, the occupational therapy assistant cannot intervene.

(g) Discharge.

(1) Only an occupational therapist has the authority to discharge patients from occupational therapy services. The discharge is based on whether the patient or client

has achieved predetermined goals, has achieved maximum benefit from occupational therapy services; or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge documentation and/or make recommendations for any further needs of the patient in another continuum of care.

Source Note: The provisions of this §372.1 adopted to be effective October 11, 1994, 19 TexReg 7717; amended to be effective August 31, 1995, 20 TexReg 6337; amended to be effective May 8, 1996, 21 TexReg 3716; amended to be effective November 4, 1997, 22 TexReg 10752; amended to be effective October 25, 1998, 23 TexReg 10912; amended to be effective August 21, 2000, 25 TexReg 8063; amended to be effective July 22, 2001, 26 TexReg 5442; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective February 27, 2005, 30 TexReg 910; amended to be effective December 4, 2005, 30 TexReg 7892; amended to be effective February 25, 2008, 33 TexReg 1604; amended to be effective September 7, 2009, 34 TexReg 6124; amended to be effective January 9, 2012, 37 TexReg 69; amended to be effective October 6, 2013, 38 TexReg 6931.

CHAPTER 373 SUPERVISION

§373.1. Supervision of Non-Licensed Personnel.

(a) Occupational Therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services; however, the non-licensed personnel must be under the supervision of an occupational therapy practitioner.

(b) Close Personal Supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. This type of supervision is required for non-licensed personnel providing support services to the occupational therapy practitioners.

(c) When occupational therapy practitioners delegate occupational therapy tasks to non-licensed personnel, the occupational therapy practitioners are responsible for ensuring that this person is adequately trained in the tasks delegated.

(d) The Occupational therapy practitioners providing the treatment must interact with the patient regarding the patient's condition, progress, and/or achievement of goals during each treatment session.

(e) Delegation of tasks to non-licensed personnel includes but it not limited to:

- (1) routine department maintenance;
- (2) transportation of patients/clients;
- (3) preparation or set up of treatment equipment and work area;
- (4) assisting patients/clients with their personal needs during treatment;
- (5) assisting in the construction of adaptive/assistive equipment and splints. The licensee must be on-site and attending for any initial applications to the patient;

(6) carrying out a predetermined segment or task in the patient's care for which the patient has demonstrated some previous performance ability in executing the task.

(f) The Non-Licensed Personnel may not:

- (1) perform occupational therapy evaluative procedures;
- (2) initiate, plan, adjust, or modify occupational therapy procedures;
- (3) act on behalf of the occupational therapist in any matter relating to occupational therapy which requires decision making or professional judgments;
- (4) write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising occupational therapy practitioner. Any documentation reflecting activities by non-licensed personnel must identify the name and title of that person and the name of the supervising occupational therapy practitioner.

Source Note: The provisions of this §373.1 adopted to be effective January 9, 1995, 19 TexReg 10361; amended to be effective August 31, 1995, 20 TexReg 6337; amended to be effective May 8, 1996, 21 TexReg 3716; amended to be effective March 5, 1997, 22 TexReg 1898; amended to be effective November 4, 1997, 22 TexReg 10752; amended to be effective October 25, 1998, 23 TexReg 11167; amended to be effective July 22, 2001, 26 TexReg 5443; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective December 4, 2005, 30 TexReg 7893; amended to be effective September 7, 2009, 34 TexReg 6124.

§373.2. Supervision of a Temporary Licensee.

(a) Requirements for all temporary licensees:

- (1) A temporary licensee works under the supervision of a regular licensed occupational therapist, whose name and license number are on file on the Board's "Supervision of a Temporary Licensee" form.
- (2) All documentation completed by an individual holding a temporary license which becomes part of the patient's/client's permanent file, must be approved and co-signed by the supervising occupational therapist.
- (3) Temporary licensees may not supervise anyone.
- (4) A temporary licensee does not become a regular licensee with those privileges until the regular license is in hand.

(b) Supervision of an occupational therapy assistant with a temporary license includes:

- (1) sixteen hours of supervision a month of which at least twelve hours are through telephone, written report or conference, including the review of progress of patients/clients assigned; plus
- (2) four or more hours of supervision a month which are face-to-face, real time supervision with the temporary licensee providing services to one or more patients/clients.

(3) A temporary licensee must have on-site supervision by an occupational therapist or occupational therapy assistant with a regular license when providing occupational therapy services.

(c) Supervision of an occupational therapist with a temporary license includes documentation regarding:

(1) frequent communication between the supervising occupational therapist and the temporary licensee by telephone, written report or conference, including the review of progress of patients/clients assigned; plus

(2) encounters twice a month where the occupational therapist directly observes the temporary licensee providing services to one or more patients/clients with face-to-face, real time interaction.

(3) A temporary licensee must have on-site supervision by an occupational therapist with a regular license when providing occupational therapy services.

Source Note: The provisions of this §373.2 adopted to be effective July 22, 2001, 26 TexReg 5443; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective August 29, 2006, 31 TexReg 6802; amended to be effective September 7, 2009, 34 TexReg 6124; amended to be effective August 19, 2010, 35 TexReg 7083.

§373.3. Supervision of an Occupational Therapy Assistant.

(a) An occupational therapy assistant shall provide occupational therapy services only under the supervision of an occupational therapist(s).

(b) Supervision of a full time employed occupational therapy assistant by the occupational therapist(s) in all settings includes:

(1) A minimum of six hours a month of frequent communication between the supervising occupational therapist(s) and the occupational therapy assistant(s) by telephone, written report, email, conference etc., including review of progress of patient's/client's assigned, plus

(2) A minimum of two hours of supervision a month of face-to-face, real time interaction with the occupational therapist(s) observing the occupational therapy assistant providing services with patients/clients.

(3) These hours shall be documented on a Supervision Log for each employer. The occupational therapist(s) or employer may request a copy of the Supervision Log. The Supervision Log is kept by the occupational therapy assistant and signed by occupational therapist(s) when supervision is given.

(4) All the occupational therapist(s), whether working full time, PRN or part-time, who delegate to the occupational therapy assistant, must be participating in the supervision time, whether on a rotational or shared basis.

(c) Occupational therapy assistants working part-time or less than a full month within a given month may pro-rate these hours, but shall document no less than four hours of supervision per month, one hour of which includes face-to-face, real time interaction by the occupational therapist(s) observing the occupational therapy assistant providing services with patients/clients.

- (d) Those months where the occupational therapy assistant licensee does not work as a occupational therapy assistant, he or she shall write N/A in the Supervision Log for that month.
- (e) Occupational therapy assistants with more than one employer must have a supervisor at each job whose name is on file with the board and must receive supervision by an occupational therapist(s), as outlined for part-time employment in this section. Occupational therapy assistants who work for more than one employer must submit the name and license number at least one OT at each employer, though any of the occupational therapist(s) at the employer may supervise.
- (f) The occupational therapy assistant must include the name of the supervising OT in each patient's intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the patient's/client's intervention.
- (g) If the occupational therapy assistant has no occupational therapist's name to write in their notes, or available to call, the occupational therapy assistant cannot provide OT services.
- (h) Occupational therapy assistants' Supervision Logs are subject to audit by the board.

Source Note: The provisions of this §373.3 adopted to be effective July 22, 2001, 26 TexReg 5443; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective October 27, 2003, 28 TexReg 9292; amended to be effective February 27, 2005, 30 TexReg 911; amended to be effective February 25, 2008, 33 TexReg 1605; amended to be effective August 26, 2008, 33 TexReg 7001; amended to be effective June 18, 2009, 34 TexReg 3983; amended to be effective January 9, 2012, 37 TexReg 69; amended to be effective October 6, 2013, 38 TexReg 6931.

CHAPTER 374 DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS

§374.1. Disciplinary Actions.

- (a) The board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the rules or the Act. The board will adhere to procedures for such action as stated in the Act, §§454.301, 454.302, 454.303, and 454.304.
- (b) The board recognizes four levels of disciplinary action for its licensees.
 - (1) Level I: Order and/or Letter of Reprimand or Other Appropriate Disciplinary Action (including but not limited to community service hours).
 - (2) Level II: Probation--The licensee may continue to practice while on probation. The board orders the probationary status which may include but is not limited to restrictions on practice and continued monitoring by the board during the specified time period.
 - (3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be reinstated upon the licensee successfully meeting all requirements.

- (4) Level IV: Revocation--A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revocation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.
- (c) Licensees and facilities which provide occupational therapy services are responsible for understanding and complying with Chapter 454 of the Occupations Code (the Occupational Therapy Practice Act), and the Texas Board of Occupational Therapy Examiners' rules.
- (d) Final disciplinary actions taken by the board will be routinely published as to the names and offenses of the licensees or facilities.
- (e) A licensee who is ordered by the board to perform certain act(s) will be monitored by the board to ensure that the required act(s) are completed per the order of the board.
- (f) A licensee or applicant is required to report to the board a felony of which he/she is convicted within 60 days after the conviction occurs.

Source Note: The provisions of this §374.1 adopted to be effective October 11, 1994, 19 TexReg 7718; amended to be effective August 31, 1995, 20 TexReg 6338; amended to be effective January 1, 1996, 20 TexReg 10908; amended to be effective May 8, 1996, 21 TexReg 3717; amended to be effective November 4, 1997, 22 TexReg 10754; amended to be effective July 22, 2001, 26 TexReg 5444; amended to be effective August 19, 2010, 35 TexReg 7083.

§374.2. Detrimental Practice.

The Act, §454.301(a)(6) states "practiced occupational therapy in a manner detrimental to the public health and welfare," which is defined but not limited to the following:

- (1) impersonating another person holding an occupational therapy license or allowing another person to use his or her license;
- (2) using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare;
- (3) failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession;
- (4) intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report;
- (5) intentionally harassing, abusing, or intimidating a patient either physically or verbally;
- (6) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code,

§§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations;

(7) recommending or prescribing therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or other consideration from the third person;

(8) breaching the confidentiality of the patient/therapist relationship;

(9) failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards;

(10) practicing occupational therapy after the expiration of a temporary, provisional, or regular license;

(11) violation of Chapter 373 of this title (relating to Supervision);

(12) advertising in a manner which is false, misleading, or deceptive;

(13) failing to register an occupational therapy facility which is not exempt or failing to renew the registration of an occupational therapy facility which is not exempt;

(14) practicing in an unregistered occupational therapy facility which is not exempt;

(15) failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care; or

(16) failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations.

Source Note: The provisions of this §374.2 adopted to be effective October 11, 1994, 19 TexReg 7718; amended to be effective May 8, 1996, 21 TexReg 3718; amended to be effective July 22, 2001, 26 TexReg 5444; amended to be effective August 19, 2010, 35 TexReg 7084; amended to be effective June 1, 2015, 40 TexReg 3200.

§374.3. Complaint Process.

(a) The Act, Subchapters G and H authorizes the board to investigate complaints.

(b) Filing and receipt of complaints.

(1) Complaints may be received in writing. Complainants shall be invited to explain their allegations. The staff will provide reasonable assistance to a person who wishes to file a complaint. Anonymous complaints will be accepted, but it is understood that the lack of a witness or the ability to secure additional information from the anonymous complainant may result in the board's inability to secure sufficient evidence to pursue action against the alleged violator.

(2) When a complaint is received, the board shall notify the parties to the complaint of the status of the complaint, unless the notice would jeopardize an undercover

investigation. The board shall notify the parties to the complaint at least as frequently as quarterly until there is final disposition of the complaint, in accordance with the Act, §454.152.

(3) Not later than the tenth calendar day after a complaint is received, the staff shall place a timeline for completion of the investigation in the file and notify all parties to the complaint. Any change in the timeline must be noted in the file and all parties notified of the change not later than seven calendar days after the change was made. For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:

(A) staff determines there is insufficient evidence to demonstrate a violation of the Act, board rules, or a board order; or

(B) staff determines that there is sufficient evidence to demonstrate a violation of the Act, board rules, or a board order and drafts proposed formal charges.

(4) The staff shall provide summary data of complaints extending beyond the complaint timeline to the coordinator and the executive director who will then notify the board at a regularly scheduled meeting.

(5) The board shall keep an information file on each complaint submitted to the board. The file will be kept current and include a record of all persons contacted in relation to the complaint, notes about the findings throughout the complaint process, and other relevant information.

(6) The Investigation Committee may determine when and if a private investigator is needed for processing of a complaint.

(7) Complaints shall be assigned a priority status in the following categories:

(A) Those indicating that credible evidence exists showing a violation of the Occupational Therapy Practice Act involving actual deception, fraud, or injury to clients or the public or a high probability of immediate deception, fraud, or injury to clients or the public.

(B) Those indicating that credible evidence exists showing a violation of the Occupational Therapy Practice Act involving a high probability of potential deception, fraud, or injury to clients or the public.

(C) Those indicating that credible evidence exists showing a violation of the Occupational Therapy Practice Act involving a potential for deception, fraud, or injury to clients or the public.

(D) All other complaints.

(c) The Executive Director and the Investigation Committee will take appropriate action to investigate the complaint or take other appropriate action.

(1) The Investigation Committee will hold meetings, at least quarterly, to review complaints, to determine if there is sufficient evidence to substantiate the allegations, to

hold informal conferences, to identify appropriate discipline for violations, and to make recommendations for disciplinary action to the board.

(2) The Investigation Committee reviews the evidence that has been submitted and gathered by the investigator and, typically makes one of the following determinations:

(A) The scope of the complaint is beyond the authority of the board and possibly may be handled by another entity. The committee may refer the complainant to an appropriate entity.

(B) There is insufficient evidence to substantiate that a violation of the Act or rules has occurred, thus closing the investigation.

(C) Evidence indicates a possible violation did occur and further investigation is needed.

(D) Evidence indicates a violation did occur and disciplinary action is not warranted.

(E) Evidence indicates a violation did occur and disciplinary action is warranted.

(d) Preliminary notice.

(1) Prior to commencing disciplinary proceedings, the staff shall serve the respondent with written notice in accordance with the Texas Government Code, §2001.54(c).

(2) Such notice shall contain a statement of the facts or conduct alleged to warrant an adverse action. The notice shall invite the respondent to show compliance with all requirements of the law for retention of the license.

(3) The respondent shall have not less than ten calendar days to respond in writing.

(e) Agreed orders.

(1) An agreed order is a legal document and the formal means by which a respondent accepts the disciplinary action imposed by the board. To be a valid document it must be approved by the board and signed by both the respondent and the chair of the board.

(2) An agreed order may be negotiated with any person under the jurisdiction of the board, the terms of which shall be approved by the Investigation Committee.

(3) The agreed order will be sent to the respondent by certified mail. To accept the agreed order, the respondent must sign it in the presence of a notary and return it to the board within ten calendar days after receipt. Inaction by the respondent constitutes rejection. If the respondent rejects the proposed settlement, the matter shall be referred to the Investigation Committee for appropriate action.

(4) The agreed order with the notarized signature of the respondent will be presented to the board. The proposed agreed order shall have no effect until such time as the board may, at a scheduled meeting, take action approving the agreed order. The agreed order

will include a provision requiring the respondent reimburse the board for all investigative expenses.

(5) The respondent shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the respondent is voluntary.

(6) Consideration by the board will include the following:

(A) Any board member who participated in the investigation of the complaint or formulation of the proposed agreed order may not vote on the agreed order.

(B) The respondent's identity will not be made available to the board until after the board has reviewed and made a decision on the agreed order.

(C) Upon an affirmative majority vote, the board shall authorize the agreed order, and the chair of the board will sign it. The board-approved agreed order will be provided to the respondent. A copy of the order will then be placed in the licensee's permanent file.

(D) If the board does not approve the agreed order, the matter will be referred to the Investigation Committee or the Executive Director for other appropriate action. The respondent and the complainant shall be so informed.

(f) Dismissal of complaints.

(1) Complaints may be dismissed for the following reasons:

(A) No evidence available.

(B) Insufficient evidence.

(C) Other reasons which the Investigation Committee believes are justification for dismissal.

(2) Upon the decision of the Investigation Committee to dismiss a complaint, the person who filed the complaint is provided a letter explaining why the complaint has been dismissed.

(3) On a quarterly basis, the board is provided with a list of the complaints that were dismissed and the reasons for the dismissals.

(4) At least annually the board will advise the Executive Council of complaints which have been disposed.

(g) Informal conference.

(1) At any time after the filing of a complaint, an informal conference may be held prior to the contested case hearing for one or more of the following purposes:

(A) Clarifying the issues;

- (B) Considering proposed admissions or stipulations of fact;
 - (C) Reviewing the procedure to govern the contested case hearing;
 - (D) Exchanging witness lists and agreeing to limit the number of witnesses;
and/or
 - (E) Doing any act that may simplify the proceedings, and dispose of matters in controversy, including settlement of issues in dispute and preparation of an agreed order for presentation to the board as provided herein.
- (2) A respondent may request an informal settlement conference; however, the decision to hold a conference shall be made by the Executive Director or the Investigation Committee.
- (3) Participation in an informal conference shall not be mandatory for the licensee or applicant, nor is it a prerequisite to a formal hearing.
- (4) The Executive Director shall decide upon the time, date, and place of the settlement conference and provide written notice to the respondent of the same. Notice shall be provided no less than ten calendar days prior to the date of the conference by certified mail, return receipt requested to the last known address of the respondent. The ten days shall begin on the date of certified mailing. The respondent may waive the ten-day notice requirement.
- (A) The notice shall inform the respondent of the following:
- (i) the nature of the alleged violation;
 - (ii) that the respondent may be represented by legal counsel;
 - (iii) that the respondent may offer the testimony of witnesses and present other evidence as may be appropriate;
 - (iv) that a board member may be present;
 - (v) that a representative of the Office of the Attorney General will be present;
 - (vi) that the respondent's attendance and participation is voluntary;
 - (vii) that the complainant and any client involved in the alleged violations may be present; and
 - (viii) that the settlement conference shall be canceled if the respondent notifies the Executive Director that he or she will not attend.
- (B) A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference.
- (5) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant's last known address. The complainant shall be informed

that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is canceled.

(6) Participants in the informal conference may include a board member, agency staff, the complainant, the respondent, attorneys representing any of the participants, and any other persons determined by the Investigation Committee or the Executive Director to be necessary for proper conduct of the conference. All other persons may be excluded.

(7) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(8) The respondent, the respondent's attorney, a board member, and board staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(9) An attorney from the Office of the Attorney General shall attend each settlement conference. The board member or Executive Director may call upon the attorney at any time for assistance in the settlement conference.

(10) The respondent shall be afforded the opportunity to make statements on his or her own behalf.

(11) Access to the board's investigative file may be prohibited or limited in accordance with the Administrative Procedures Act (APA), Chapter 2001, Texas Government Code, and the Open Records Act, Chapter 552, Texas Government Code.

(12) No formal recording of the settlement conference shall be made.

(13) At the conclusion of the settlement conference, the board member or the Executive Director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Occupational Therapy Practice Act. The board member or the Executive Director may also conclude that the board lacks jurisdiction, that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(h) The board follows the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, for resolution of complaints as a contested case. A copy of the APA procedures may be obtained from the board.

(i) Should the recommendation for an informal disposition not be accepted by the respondent, the complaint shall be referred back to the Investigation Committee for appropriate action. The committee shall determine if the case should be referred to the State Office of Administrative Hearings (SOAH) or dismissed for insufficient evidence or other reasons justifying a dismissal.

(j) If the Investigation Committee determines that a violation has occurred and the respondent is not under the jurisdiction of the board, the committee has the option of referring the case to the appropriate authority: district attorney, county attorney, etc.

Source Note: The provisions of this §374.3 adopted to be effective May 8, 1996, 21 TexReg 3718; amended to be effective July 22, 2001, 26 TexReg 5444.

§374.4. Code of Ethics.

The Texas Board of Occupational Therapy Examiners' Code of Ethics is a public statement of the values and principles used in promoting and maintaining high standards of behavior in occupational therapy within the state of Texas. The Code of Ethics is a set of principles that applies to occupational therapy practitioners. ("Practitioners" in this section are defined as those individuals licensed by this board or applicants for licensure with this board.) The Texas Board of Occupational Therapy Examiners follows the 2010 AOTA's Code of Ethics.

PREAMBLE

The American Occupational Therapy Association (AOTA) *Occupational Therapy Code of Ethics and Ethics Standards (2010)* ("Code and Ethics Standards") is a public statement of principles used to promote and maintain high standards of conduct within the profession. Members of AOTA are committed to promoting inclusion, diversity, independence, and safety for all recipients in various stages of life, health, and illness and to empower all beneficiaries of occupational therapy. This commitment extends beyond service recipients to include professional colleagues, students, educators, businesses, and the community.

Fundamental to the mission of the occupational therapy profession is the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings.

"Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well being, and quality of life" AOTA, 2004). Occupational therapy personnel have an ethical responsibility primarily to recipients of service and secondarily to society.

The *Occupational Therapy Code of Ethics and Ethics Standards (2010)* was tailored to address the most prevalent ethical concerns of the profession in education, research, and practice. The concerns of stakeholders including the public, consumers, students, colleagues, employers, research participants, researchers, educators, and practitioners were addressed in the creation of this document. A review of issues raised in ethics cases, member questions related to ethics, and content of other professional codes of ethics were utilized to ensure that the revised document is applicable to occupational therapists, occupational therapy assistants, and students in all roles.

The historical foundation of this Code and Ethics Standards is based on ethical reasoning surrounding practice and professional issues, as well as on empathic reflection regarding these interactions with others (see e.g., AOTA, 2005, 2006). This reflection resulted in the establishment of principles that guide ethical action, which goes beyond rote following of rules or application of principles. Rather, ethical action is a manifestation of moral character and mindful reflection. It is a commitment to benefit others, to virtuous practice of artistry and science, to genuinely good behaviors, and to noble acts of courage.

While much has changed over the course of the profession's history, more has remained the same. The profession of occupational therapy remains grounded in seven core concepts, as identified in the *Core Values and Attitudes of Occupational Therapy Practice* (AOTA, 1993): *altruism, equality, freedom, justice, dignity, truth, and prudence*. *Altruism* is the individual's ability to place the needs of others before their own. *Equality* refers to the desire to promote fairness in interactions with others. The concept of *freedom* and personal choice is paramount in a profession in which the desires of the client must guide our interventions. Occupational therapy practitioners, educators, and researchers relate in a fair and impartial manner to

individuals with whom they interact and respect and adhere to the applicable laws and standards regarding their area of practice, be it direct care, education, or research (*justice*). Inherent in the practice of occupational therapy is the promotion and preservation of the individuality and *dignity* of the client, by assisting him or her to engage in occupations that are meaningful to him or her regardless of level of disability. In all situations, occupational therapists, occupational therapy assistants, and students must provide accurate information, both in oral and written form (*truth*). Occupational therapy personnel use their clinical and ethical reasoning skills, sound judgment, and reflection to make decisions to direct them in their area(s) of practice (*prudence*). These seven core values provide a foundation by which occupational therapy personnel guide their interactions with others, be they students, clients, colleagues, research participants, or communities. These values also define the ethical principles to which the profession is committed and which the public can expect.

The *Occupational Therapy Code of Ethics and Ethics Standards (2010)* is a guide to professional conduct when ethical issues arise. Ethical decision making is a process that includes awareness of how the outcome will impact occupational therapy clients in all spheres. Applications of Code and Ethics Standards Principles are considered situation-specific, and where a conflict exists, occupational therapy personnel will pursue responsible efforts for resolution. These Principles apply to occupational therapy personnel engaged in any professional role, including elected and volunteer leadership positions.

The specific purposes of the *Occupational Therapy Code of Ethics and Ethics Standards (2010)* are to

1. Identify and describe the principles supported by the occupational therapy profession.
2. Educate the general public and members regarding established principles to which occupational therapy personnel are accountable.
3. Socialize occupational therapy personnel to expected standards of conduct.
4. Assist occupational therapy personnel in recognition and resolution of ethical dilemmas.

The *Occupational Therapy Code of Ethics and Ethics Standards (2010)* define the set of principles that apply to occupational therapy personnel at all levels:

DEFINITIONS

- **Recipient of service:** Individuals or groups receiving occupational therapy.
- **Student:** A person who is enrolled in an accredited occupational therapy education program.
- **Research participant:** A prospective participant or one who has agreed to participate in an approved research project.
- **Employee:** A person who is hired by a business (facility or organization) to provide occupational therapy services.
- **Colleague:** A person who provides services in the same or different business (facility or organization) to which a professional relationship exists or may exist.
- **Public:** The community of people at large.

BENEFICENCE

Principle 1. Occupational therapy personnel shall demonstrate a concern for the well-being and safety of the recipients of their services.

Beneficence includes all forms of action intended to benefit other persons. The term *beneficence* connotes acts of mercy, kindness, and charity (Beauchamp & Childress, 2009). Forms of beneficence typically include altruism, love, and humanity. Beneficence requires taking action by helping others, in other words, by promoting good, by preventing harm, and by removing harm. Examples of beneficence include protecting and defending the rights of others, preventing harm from occurring to others, removing conditions that will cause harm to others, helping persons with disabilities, and rescuing persons in danger (Beauchamp & Childress, 2009).

Occupational therapy personnel shall

- A. Respond to requests for occupational therapy services (e.g., a referral) in a timely manner as determined by law, regulation, or policy.
- B. Provide appropriate evaluation and a plan of intervention for all recipients of occupational therapy services specific to their needs.
- C. Reevaluate and reassess recipients of service in a timely manner to determine if goals are being achieved and whether intervention plans should be revised.
- D. Avoid the inappropriate use of outdated or obsolete tests/assessments or data obtained from such tests in making intervention decisions or recommendations.
- E. Provide occupational therapy services that are within each practitioner's level of competence and scope of practice (e.g., qualifications, experience, the law).
- F. Use, to the extent possible, evaluation, planning, intervention techniques, and therapeutic equipment that are evidence-based and within the recognized scope of occupational therapy practice.
- G. Take responsible steps (e.g., continuing education, research, supervision, training) and use careful judgment to ensure their own competence and weigh potential for client harm when generally recognized standards do not exist in emerging technology or areas of practice.
- H. Terminate occupational therapy services in collaboration with the service recipient or responsible party when the needs and goals of the recipient have been met or when services no longer produce a measurable change or outcome.
- I. Refer to other health care specialists solely on the basis of the needs of the client.
- J. Provide occupational therapy education, continuing education, instruction, and training that are within the instructor's subject area of expertise and level of competence.
- K. Provide students and employees with information about the Code and Ethics Standards, opportunities to discuss ethical conflicts, and procedures for reporting unresolved ethical conflicts.
- L. Ensure that occupational therapy research is conducted in accordance with currently accepted ethical guidelines and standards for the protection of research participants and the dissemination of results.
- M. Report to appropriate authorities any acts in practice, education, and research that appear unethical or illegal.
- N. Take responsibility for promoting and practicing occupational therapy on the basis of current knowledge and research and for further developing the profession's body of knowledge.

NONMALEFICENCE

Principle 2. Occupational therapy personnel shall intentionally refrain from actions that cause harm.

Nonmaleficence imparts an obligation to refrain from harming others (Beauchamp & Childress,

2009). The principle of nonmaleficence is grounded in the practitioner's responsibility to refrain from causing harm, inflicting injury, or wronging others. While beneficence requires action to incur benefit, nonmaleficence requires non-action to avoid harm (Beauchamp & Childress, 2009). Nonmaleficence also includes an obligation to not impose risks of harm even if the potential risk is without malicious or harmful intent. This principle often is examined under the context of *due care*. If the standard of due care outweighs the benefit of treatment, then refraining from treatment provision would be ethically indicated (Beauchamp & Childress, 2009).

Occupational therapy personnel shall

- A. Avoid inflicting harm or injury to recipients of occupational therapy services, students, research participants, or employees.
- B. Make every effort to ensure continuity of services or options for transition to appropriate services to avoid abandoning the service recipient if the current provider is unavailable due to medical or other absence or loss of employment.
- C. Avoid relationships that exploit the recipient of services, students, research participants, or employees physically, emotionally, psychologically, financially, socially, or in any other manner that conflicts or interferes with professional judgment and objectivity.
- D. Avoid engaging in any sexual relationship or activity, whether consensual or nonconsensual, with any recipient of service, including family or significant other, student, research participant, or employee, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer.
- E. Recognize and take appropriate action to remedy personal problems and limitations that might cause harm to recipients of service, colleagues, students, research participants, or others.
- F. Avoid any undue influences, such as alcohol or drugs, that may compromise the provision of occupational therapy services, education, or research.
- G. Avoid situations in which a practitioner, educator, researcher, or employer is unable to maintain clear professional boundaries or objectivity to ensure the safety and well-being of recipients of service, students, research participants, and employees.
- H. Maintain awareness of and adherence to the Code and Ethics Standards when participating in volunteer roles.
- I. Avoid compromising client rights or well-being based on arbitrary administrative directives by exercising professional judgment and critical analysis.
- J. Avoid exploiting any relationship established as an occupational therapist or occupational therapy assistant to further one's own physical, emotional, financial, political, or business interests at the expense of the best interests of recipients of services, students, research participants, employees, or colleagues.
- K. Avoid participating in bartering for services because of the potential for exploitation and conflict of interest unless there are clearly no contraindications or bartering is a culturally appropriate custom.
- L. Determine the proportion of risk to benefit for participants in research prior to implementing a study.

AUTONOMY AND CONFIDENTIALITY

Principle 3. Occupational therapy personnel shall respect the right of the individual to self-determination.

The principle of autonomy and confidentiality expresses the concept that practitioners have a duty to treat the client according to the client's desires, within the bounds of accepted standards

of care and to protect the client's confidential information. Often *autonomy* is referred to as the *self-determination* principle. However, respect for autonomy goes beyond acknowledging an individual as a mere agent and also acknowledges a "person's right to hold views, to make choices, and to take actions based on personal values and beliefs" (Beauchamp & Childress, 2009, p. 103). Autonomy has become a prominent principle in health care ethics; the right to make a determination regarding care decisions that directly impact the life of the service recipient should reside with that individual. The principle of autonomy and confidentiality also applies to students in an educational program, to participants in research studies, and to the public who seek information about occupational therapy services.

Occupational therapy personnel shall

- A. Establish a collaborative relationship with recipients of service including families, significant others, and caregivers in setting goals and priorities throughout the intervention process. This includes full disclosure of the benefits, risks, and potential outcomes of any intervention; the personnel who will be providing the intervention(s); and/or any reasonable alternatives to the proposed intervention.
- B. Obtain consent before administering any occupational therapy service, including evaluation, and ensure that recipients of service (or their legal representatives) are kept informed of the progress in meeting goals specified in the plan of intervention/care. If the service recipient cannot give consent, the practitioner must be sure that consent has been obtained from the person who is legally responsible for that recipient.
- C. Respect the recipient of service's right to refuse occupational therapy services temporarily or permanently without negative consequences.
- D. Provide students with access to accurate information regarding educational requirements and academic policies and procedures relative to the occupational therapy program/educational institution.
- E. Obtain informed consent from participants involved in research activities, and ensure that they understand the benefits, risks, and potential outcomes as a result of their participation as research subjects.
- F. Respect research participant's right to withdraw from a research study without consequences.
- G. Ensure that confidentiality and the right to privacy are respected and maintained regarding all information obtained about recipients of service, students, research participants, colleagues, or employees. The only exceptions are when a practitioner or staff member believes that an individual is in serious foreseeable or imminent harm. Laws and regulations may require disclosure to appropriate authorities without consent.
- H. Maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communications, including compliance with HIPAA regulations.
- I. Take appropriate steps to facilitate meaningful communication and comprehension in cases in which the recipient of service, student, or research participant has limited ability to communicate (e.g., aphasia or differences in language, literacy, culture).
- J. Make every effort to facilitate open and collaborative dialogue with clients and/or responsible parties to facilitate comprehension of services and their potential risks/benefits.

SOCIAL JUSTICE

Principle 4. Occupational therapy personnel shall provide services in a fair and equitable manner.

Social justice, also called *distributive justice*, refers to the fair, equitable, and appropriate distribution of resources. The principle of social justice refers broadly to the distribution of all

rights and responsibilities in society (Beauchamp & Childress, 2009). In general, the principle of social justice supports the concept of achieving justice in every aspect of society rather than merely the administration of law. The general idea is that individuals and groups should receive fair treatment and an impartial share of the benefits of society. Occupational therapy personnel have a vested interest in addressing unjust inequities that limit opportunities for participation in society (Braveman & Bass-Haugen, 2009). While opinions differ regarding the most ethical approach to addressing distribution of health care resources and reduction of health disparities, the issue of social justice continues to focus on limiting the impact of social inequality on health outcomes.

Occupational therapy personnel shall

- A. Uphold the profession's altruistic responsibilities to help ensure the common good.
- B. Take responsibility for educating the public and society about the value of occupational therapy services in promoting health and wellness and reducing the impact of disease and disability.
- C. Make every effort to promote activities that benefit the health status of the community.
- D. Advocate for just and fair treatment for all patients, clients, employees, and colleagues, and encourage employers and colleagues to abide by the highest standards of social justice and the ethical standards set forth by the occupational therapy profession.
- E. Make efforts to advocate for recipients of occupational therapy services to obtain needed services through available means.
- F. Provide services that reflect an understanding of how occupational therapy service delivery can be affected by factors such as economic status, age, ethnicity, race, geography, disability, marital status, sexual orientation, gender, gender identity, religion, culture, and political affiliation.
- G. Consider offering pro bono ("for the good") or reduced-fee occupational therapy services for selected individuals when consistent with guidelines of the employer, third-party payer, and/or government agency.

PROCEDURAL JUSTICE

Principle 5. Occupational therapy personnel shall comply with institutional rules, local, state, federal, and international laws and AOTA documents applicable to the profession of occupational therapy.

Procedural justice is concerned with making and implementing decisions according to fair processes that ensure "fair treatment" (Maiese, 2004). Rules must be impartially followed and consistently applied to generate an unbiased decision. The principle of procedural justice is based on the concept that procedures and processes are organized in a fair manner and that policies, regulations, and laws are followed. While *the law* and *ethics* are not synonymous terms, occupational therapy personnel have an ethical responsibility to uphold current reimbursement regulations and state/territorial laws governing the profession. In addition, occupational therapy personnel are ethically bound to be aware of organizational policies and practice guidelines set forth by regulatory agencies established to protect recipients of service, research participants, and the public.

Occupational therapy personnel shall

- A. Be familiar with and apply the Code and Ethics Standards to the work setting, and share them with employers, other employees, colleagues, students, and researchers.
- B. Be familiar with and seek to understand and abide by institutional rules, and when those rules conflict with ethical practice, take steps to resolve the conflict.

- C. Be familiar with revisions in those laws and AOTA policies that apply to the profession of occupational therapy and inform employers, employees, colleagues, students, and researchers of those changes.
- D. Be familiar with established policies and procedures for handling concerns about the Code and Ethics Standards, including familiarity with national, state, local, district, and territorial procedures for handling ethics complaints as well as policies and procedures created by AOTA and certification, licensing, and regulatory agencies.
- E. Hold appropriate national, state, or other requisite credentials for the occupational therapy services they provide.
- F. Take responsibility for maintaining high standards and continuing competence in practice, education, and research by participating in professional development and educational activities to improve and update knowledge and skills.
- G. Ensure that all duties assumed by or assigned to other occupational therapy personnel match credentials, qualifications, experience, and scope of practice.
- H. Provide appropriate supervision to individuals for whom they have supervisory responsibility in accordance with AOTA official documents and local, state, and federal or national laws, rules, regulations, policies, procedures, standards, and guidelines.
- I. Obtain all necessary approvals prior to initiating research activities.
- J. Report all gifts and remuneration from individuals, agencies, or companies in accordance with employer policies as well as state and federal guidelines.
- K. Use funds for intended purposes, and avoid misappropriation of funds.
- L. Take reasonable steps to ensure that employers are aware of occupational therapy's ethical obligations as set forth in this Code and Ethics Standards and of the implications of those obligations for occupational therapy practice, education, and research.
- M. Actively work with employers to prevent discrimination and unfair labor practices, and advocate for employees with disabilities to ensure the provision of reasonable accommodations.
- N. Actively participate with employers in the formulation of policies and procedures to ensure legal, regulatory, and ethical compliance.
- O. Collect fees legally. Fees shall be fair, reasonable, and commensurate with services delivered. Fee schedules must be available and equitable regardless of actual payer reimbursements/contracts.
- P. Maintain the ethical principles and standards of the profession when participating in a business arrangement as owner, stockholder, partner, or employee, and refrain from working for or doing business with organizations that engage in illegal or unethical business practices (e.g., fraudulent billing, providing occupational therapy services beyond the scope of occupational therapy practice).

VERACITY

Principle 6. Occupational therapy personnel shall provide comprehensive, accurate, and objective information when representing the profession.

Veracity is based on the virtues of truthfulness, candor, and honesty. The principle of *veracity* in health care refers to comprehensive, accurate, and objective transmission of information and includes fostering the client's understanding of such information (Beauchamp & Childress, 2009). Veracity is based on respect owed to others. In communicating with others, occupational therapy personnel implicitly promise to speak truthfully and not deceive the listener. By entering into a relationship in care or research, the recipient of service or research participant enters into a contract that includes a right to truthful information (Beauchamp & Childress, 2009). In addition, transmission of information is incomplete without also ensuring that the recipient or participant understands the information provided. Concepts of veracity must be carefully

balanced with other potentially competing ethical principles, cultural beliefs, and organizational policies. Veracity ultimately is valued as a means to establish trust and strengthen professional relationships. Therefore, adherence to the Principle also requires thoughtful analysis of how full disclosure of information may impact outcomes.

Occupational therapy personnel shall

- A. Represent the credentials, qualifications, education, experience, training, roles, duties, competence, views, contributions, and findings accurately in all forms of communication about recipients of service, students, employees, research participants, and colleagues.
- B. Refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, misleading, or unfair statements or claims.
- C. Record and report in an accurate and timely manner, and in accordance with applicable regulations, all information related to professional activities.
- D. Ensure that documentation for reimbursement purposes is done in accordance with applicable laws, guidelines, and regulations.
- E. Accept responsibility for any action that reduces the public's trust in occupational therapy.
- F. Ensure that all marketing and advertising are truthful, accurate, and carefully presented to avoid misleading recipients of service, students, research participants, or the public.
- G. Describe the type and duration of occupational therapy services accurately in professional contracts, including the duties and responsibilities of all involved parties.
- H. Be honest, fair, accurate, respectful, and timely in gathering and reporting fact-based information regarding employee job performance and student performance.
- I. Give credit and recognition when using the work of others in written, oral, or electronic media.
- J. Not plagiarize the work of others.

FIDELITY

Principle 7. Occupational therapy personnel shall treat colleagues and other professionals with respect, fairness, discretion, and integrity.

The principle of fidelity comes from the Latin root *fidelis* meaning loyal. *Fidelity* refers to being faithful, which includes obligations of loyalty and the keeping of promises and commitments (Veatch & Flack, 1997). In the health professions, fidelity refers to maintaining good-faith relationships between various service providers and recipients. While respecting fidelity requires occupational therapy personnel to meet the client's reasonable expectations (Purtillo, 2005), Principle 7 specifically addresses fidelity as it relates to maintaining collegial and organizational relationships. Professional relationships are greatly influenced by the complexity of the environment in which occupational therapy personnel work. Practitioners, educators, and researchers alike must consistently balance their duties to service recipients, students, research participants, and other professionals as well as to organizations that may influence decision making and professional practice.

Occupational therapy personnel shall

- A. Respect the traditions, practices, competencies, and responsibilities of their own and other professions, as well as those of the institutions and agencies that constitute the working environment.

- B. Preserve, respect, and safeguard private information about employees, colleagues, and students unless otherwise mandated by national, state, or local laws or permission to disclose is given by the individual.
- C. Take adequate measures to discourage, prevent, expose, and correct any breaches of the Code and Ethics Standards and report any breaches of the former to the appropriate authorities.
- D. Attempt to resolve perceived institutional violations of the Code and Ethics Standards by utilizing internal resources first.
- E. Avoid conflicts of interest or conflicts of commitment in employment, volunteer roles, or research.
- F. Avoid using one's position (employee or volunteer) or knowledge gained from that position in such a manner that gives rise to real or perceived conflict of interest among the person, the employer, other Association members, and/or other organizations.
- G. Use conflict resolution and/or alternative dispute resolution resources to resolve organizational and interpersonal conflicts.
- H. Be diligent stewards of human, financial, and material resources of their employers, and refrain from exploiting these resources for personal gain.

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Note. This document replaces the following rescinded Ethics documents 2010CApril18: the *Occupational Therapy Code of Ethics (2005) (American Journal of Occupational Therapy, 59, 639–642)*; the *Guidelines to the Occupational Therapy Code of Ethics (American Journal of Occupational Therapy, 60, 652–658)*; and the *Core Values and Attitudes of Occupational Therapy Practice (American Journal of Occupational Therapy, 47, 1085–1086)*.

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Source Note: The provisions of this §374.4 adopted to be effective December 2, 2013, 38 TexReg 8683.

CHAPTER 375 FEES

§375.1. Fees.

- (a) Fees are prescribed by the Executive Council and may be subject to change by legislative mandate, refer to 22 TAC §651.1 and §651.3 of the Executive Council Rules. The fees are required to be paid before a license or a renewal is issued. The application fee will be submitted with the application and is non-refundable.
- (b) A cashier's check, certified check, or money order must accompany all future payments to the board after an insufficient funds check has been processed by the board.
- (c) An applicant for a license shall pay the application fee plus the appropriate license fee.
- (d) The board will not refund any application fee or license fee to an applicant who is denied a license. Applicants requesting that the board cease the license application process shall forfeit all fees paid. Such requests must be received by the board in writing.
- (e) There shall be no refunds issued to individuals who have had their licenses suspended or revoked.
- (f) Licensees who have had their licenses suspended for failure to pay child support shall pay all applicable fees before licenses will be reissued.

Source Note: The provisions of this §375.1 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective May 8, 1996, 21 TexReg 3718; amended to be effective August 24, 2008, 33 TexReg 6605.

CHAPTER 376 REGISTRATION OF FACILITIES

§376.1. Facility Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Occupational Therapy Facility--A physical site, such as a building, office, or portable facility, where the practice of occupational therapy takes place. An Occupational Therapy Facility must be under the direction of an occupational therapist, registered or occupational therapist licensed by the board. The definition of Occupational Therapy Facility does not include a physical site such as a building, office, or portable facility if it meets all three conditions:

(A) It is not in the care, custody or control of the individual or company providing occupational therapy services therein; and

(B) Occupational therapy services are not provided on a predictable or regular basis at any one location; and

(C) Healthcare delivery is not the primary purpose, activity, or business of the site where the services are provided.

(2) The OT or OTR in Charge--An occupational therapist who is designated on the application for registration and who has the authority and responsibility for the facility's compliance with the Act and Rules pertaining to the practice of occupational therapy in the facility.

Source Note: The provisions of this §376.1 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective November 4, 1997, 22 TexReg 10754; amended to be effective March 1, 2004, 28 TexReg 9292; amended to be effective March 12, 2007, 32 TexReg 1328; amended to be effective September 7, 2009, 34 TexReg 6125; amended to be effective March 21, 2010, 35 TexReg 2313.

§376.2. Requirement for Practice Setting of Licensees.

All licensees of this Act who practice in an Occupational Therapy Facility can do so only if that facility is registered or exempt under this rule. A facility shall not be required to register under this section if such facility or any person providing health care services at the facility does not perform or hold itself or themselves out as performing or offering to perform occupational therapy as defined in the Act.

Source Note: The provisions of this §376.2 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective March 1, 2004, 28 TexReg 9292.

§376.3. Requirements for Registration Application.

(a) Registration applications must include:

(1) name of the Occupational Therapy Facility;

(2) physical/street address of the Occupational Therapy Facility;

(3) mailing address, if different from the street address;

(4) the name and following information about the entity or individual (in the case of a sole proprietorship) holding themselves out as offering occupational therapy services at the facility.

(A) Sole proprietor:

(i) name, home address, date of birth, social security number of the sole proprietor;

(ii) federal employer identification number if applicable.

(B) Partnership:

(i) name, home address, date of birth, social security number of the managing partner;

(ii) federal employer identification number

(C) Corporation:

(i) names, home addresses, dates of birth, and social security numbers of managing officers (for purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of occupational therapy Facility operations);

(ii) federal employer identification number.

(D) Governmental entity (federal, state, county, local):

(i) name, home address, date of birth, social security number of the individual completing the application;

(ii) federal employer identification number;

(5) the name and license number of the OT or OTR in Charge and his or her signature;

(6) the names and license numbers of other licensees of the Act who practice in the Occupational Therapy Facility;

(7) the Social Security Number and signature of the individual, managing partner or officer or person authorized to complete the form;

(8) the non-refundable application fee, as set by the Executive Council.

(b) An individual or entity that holds themselves out as offering occupational therapy at more than one facility is required to submit a facility application for each Occupational Therapy Facility registered.

(c) All of the facilities owned by an individual, partnership, corporation or other entity will receive synchronized expiration dates. An additional Occupational Therapy Facility registered six or more months before the first facility expiration date will receive the same expiration date as for the first facility.

- (d) An Occupational Therapy Facility that has not been registered previously must complete the registration process and have the registration certificate before the first patient treatment.
- (e) The Occupational Therapy Facility application is valid one year after it is received by the board.
- (f) The Occupational Therapy Facility registration fee(s) will be waived in circumstances which are temporary in nature, such as a natural disaster or events for special populations, such as the Special Olympics.
- (g) Waiver from Occupational Therapy Facility registration fees does not nullify all other sections as set forth in the TBOTE Rules, Chapter 376.

Source Note: The provisions of this §376.3 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective November 4, 1997, 22 TexReg 10755; amended to be effective March 1, 2004, 28 TexReg 9292; amended to be effective November 1, 2006, 31 TexReg 6803; amended to be effective August 24, 2008, 33 TexReg 6605; amended to be effective September 7, 2009, 34 TexReg 6125; amended to be effective March 21, 2010, 35 TexReg 2314.

§376.4. Requirements for Registered Facilities.

- (a) Each facility must have a designated OT or OTR-in-charge. A registered facility is required to report the name and license number of the new OT or OTR-in-charge no later than 30 days after the change occurs.
- (b) A registered facility must display the registration certificate in a prominent location in the facility where it is available for inspection by the public. A registration certificate issued by the board is the property of the board and must be surrendered on demand by the board.
- (c) A registered Occupational Therapy Facility is subject to inspection to verify compliance with the Act and this chapter by authorized personnel of the board at any reasonable time.
- (d) An individual or entities that registers a facility under this Rule must notify the board within 30 days of any change to the physical/street address or mailing address or name and pay for a new wall certificate to reflect the physical address change. A change in ownership or type of ownership requires a new registration.
- (e) The owner must cancel a facility registration if occupational therapy services will no longer be provided at that facility. To cancel registration the owner must notify the board in writing within 30 days of the termination of occupational therapy services at this facility. If the owner decides to resume the provision of occupational services at a future date, the facility registration may be restored with the previous expiration date by meeting the requirements in §376.8 of this title (relating to Restoration of Registration).
- (f) If the owner does not notify the board in writing that there is a termination of occupational therapy services and the facility's registration is expired more than one year, there will be a penalty should the owner want to resume occupational therapy services at the facility at a future date.
- (g) Within thirty days of a change in facility ownership, the former owner must notify the Board in writing of the change. The new owner must register the facility under new ownership as required by §376.10 of this title (relating to Change in Occupational Therapy Facility Ownership).

Source Note: The provisions of this §376.4 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective November 4, 1997, 22 TexReg 10755; amended to be effective March 1, 2004, 28 TexReg 9292; amended to be effective August 24, 2008, 33 TexReg 6605; amended to be effective September 7, 2009, 34 TexReg 6125; amended to be effective February 14, 2013, 38 TexReg 676; amended to be effective October 6, 2013, 38 TexReg 6932.

§376.5. Exemptions to Registration.

A facility licensed under Subtitle B, Title 4, Health and Safety Code, is exempt from this definition, i.e., hospitals, nursing homes, ambulatory surgical centers, birthing centers, abortion, continuing care, personal care, and special care facilities. Colleges, universities, schools, home health settings, and settings where Early Childhood Intervention (ECI) services take place are exempted from registration. These types of facilities are automatically exempt and are not required to obtain a formal exemption from the board.

Source Note: The provisions of this §376.5 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective August 31, 1995, 20 TexReg 6338; amended to be effective March 1, 2004, 28 TexReg 9292; amended to be effective March 10, 2011, 36 TexReg 1690.

§376.6. Renewal of Registration Application.

(a) An individual or entity registered as a facility under this chapter must renew its registration annually. Licensee may not provide occupational therapy services in a facility if the registration is not current. The Board will maintain a secure resource for verification of registration status and expiration date on its website.

(b) Requirements to renew a facility are:

- (1) a renewal signed by the owner, managing partner or officer, or a person authorized by the owner to complete the form and the OT or OTR-in-charge;
- (2) a list of all occupational therapy practitioners working at the facility;
- (3) the renewal fee as set by the Executive Council, and any late fees, which may be due; and
- (4) an Occupational Therapist-in-Charge form with the signature of the occupational therapist, if the Therapist-in-Charge has changed.

(c) The annual renewal date of a facility registration is the last day of the month in which the registration was originally issued, or as synchronized with the first facility registered by an owner. The owner of OT facilities may request that the renewal date of the OT facilities be synchronized with the PT facilities in the same locations.

(d) The board will notify the facility at least 30 days before the registration expiration date. An individual or entity offering occupational therapy bears the responsibility for ensuring that the registration is renewed. Failure to receive a renewal notice from the board does not exempt the requirement to pay the renewal fee in a timely manner.

(e) Occupational therapy services may not be provided at a facility without a current facility registration. The current registration expiration date as displayed on the board's website is considered evidence of the current registration.

(f) Late Renewal. A facility renewing after the expiration date, must submit all the items listed in subsection (b) of this section plus the late fee which is determined as:

- (1) One day late to 90 days late--a late fee equal to half the renewal fee, plus the renewal fee.
- (2) More than 90 days to less than one year late--a late fee equal to the renewal fee, plus the renewal fee.
- (3) A facility late more than one year must follow the requirements set out in §376.8 of this title (relating to Restoration of Registration).
- (4) An owner may not register a new facility in lieu of renewal of a previously registered facility at the same location.

Source Note: The provisions of this §376.6 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective March 1, 2004, 28 TexReg 9292; amended to be effective November 1, 2006, 31 TexReg 6803; amended to be effective September 7, 2009, 34 TexReg 6125; amended to be effective March 21, 2010, 35 TexReg 2314; amended to be effective June 10, 2012, 37 TexReg 4070; amended to be effective February 14, 2013, 38 TexReg 676.

§376.7. Failure To Register.

Individuals or entities which fail to register an Occupational Therapy Facility with the board as required by Act and rule will be notified of their noncompliance with the Act and the disciplinary actions by this board to which they are subject. Additionally, all licensees of this Act employed at the facility will be notified that they are in violation of the Act and Rules and thereby subject to disciplinary action.

Source Note: The provisions of this §376.7 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective March 1, 2004, 28 TexReg 9292.

§376.8. Restoration of Registration.

(a) When an individual or entity fails to renew the registration of a facility within the renewal month, and the facility's registration is expired more than one year, the facility may restore the registration by completing the requirements including paying fees as set by the Executive Council. The restoration requirements include:

- (1) a restoration application;
- (2) a restoration fee; and
- (3) a Therapist-in-Charge form signed by the Therapist-in-Charge.

(b) The fee is determined by whether the owner of the facility notified the board in writing before its expiration that occupational therapy services would no longer be provided. Those that follow that requirement set out in §376.6 of this title (relating to Renewal of Registration Application) will pay one fee and those that do not notify the board will pay another.

(c) An owner of a facility may not register the facility as a new facility in lieu of renewal or restoration of a previously registered facility in the same location.

Source Note: The provisions of this §376.8 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective August 31, 1995, 20 TexReg 6338; amended to be effective March 1, 2004, 28 TexReg 9292; amended to be effective June 10, 2012, 37 TexReg 4070; amended to be effective February 14, 2013, 38 TexReg 676.

§376.9. Disciplinary Action.

(a) The board may assign disciplinary action to an individual or entity registering a facility under this Rule for violation of the Act or Rules. The disciplinary action may include: revocation or suspension of the registration; probation; penalty fees; or other appropriate disciplinary action.

(b) The processing of complaints against individuals or entities registering Occupational Therapy Facilities under this Rule is accomplished in accordance with Chapter 374 of this title (relating to Complaints).

(c) A revocation or suspension of a registration affects all facilities registered by the same owner.

Source Note: The provisions of this §376.9 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective March 1, 2004, 28 TexReg 9292; amended to be effective March 21, 2010, 35 TexReg 2314.

§376.10. Change in Occupational Therapy Facility Ownership.

(a) A registration cannot be transferred or sold to another person or owner. When a facility changes ownership, the new owner must register it as a new facility and the previous owner must request in writing that the registration of the original facility be withdrawn within 30 days. A change of ownership takes place when one of the following occurs:

- (1) a sole proprietor (individual) incorporates or changes to a partnership;
- (2) a partnership incorporates or changes to a sole proprietor;
- (3) a corporation dissolves and changes its status to a partnership or sole proprietor;
- (4) a sole proprietor (individual), partnership or corporation sells or transfers the ownership to another individual, partnership or corporation.

(b) If there is a change of managing officers in a partnership or corporation, the entity that registered the Occupational Therapy Facility must send the board written notification within 30 days. For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of occupational therapy facility operations. The written notification shall include the effective date of such change and the following information for the new managing officers:

- (1) name and title;
- (2) home address;
- (3) date of birth; and
- (4) social security number.

Source Note: The provisions of this §376.10 adopted to be effective March 1, 2004, 28 TexReg 9292; amended to be effective September 30, 2012, 37 TexReg 7493.

EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

TITLE 22 EXAMINING BOARDS PART 28

CHAPTER 651 FEES

§651.1. Occupational Therapy Board Fees.

(a) Application Regular License.

- (1) Occupational Therapist--\$140.
- (2) Occupational Therapy Assistant--\$100.
- (3) Application to retake the exam, OT--\$25.
- (4) Application to retake the exam, OTA--\$25.

(b) Temporary License.

- (1) Occupational Therapist--\$70.
- (2) Occupational Therapy Assistant--\$55.

(c) Provisional License.

- (1) Occupational Therapist--\$80.
- (2) Occupational Therapy Assistant--\$75.

(d) Active to Inactive Status.

- (1) Occupational Therapist--a fee to equal one-half the renewal fee.
- (2) Occupational Therapy Assistant--a fee to equal one-half the renewal fee.

(e) Inactive Status to Active Status.

- (1) Occupational Therapist--a fee equal to the renewal fee.
- (2) Occupational Therapy Assistant--a fee equal to the renewal fee.

(f) Renewal.

- (1) Active.
 - (A) Occupational Therapist--\$242.

- (B) Occupational Therapy Assistant--\$180.
- (2) Inactive.
 - (A) Occupational Therapist--a fee equal to one-half the renewal fee.
 - (B) Occupational Therapy Assistant--a fee equal to one-half the renewal fee.
- (g) Retired Status.
 - (1) Application--\$25.
 - (2) Renewal--\$25.
- (h) Late Fees Renewal (all licensees).
 - (1) Late 90 days or less--the renewal fee plus late fee which is equal to one-half of the renewal fee.
 - (2) Late more than 90 days but less than one year--the renewal fee plus late fee which is equal to the renewal fee.
- (i) License Restoration Fee for all licensees--a fee equal to the renewal fee.
- (j) Registration Fees, All Facilities--\$215.
- (k) Renewal Fees, All Facilities--\$215.
- (l) Late Fees--All Facilities.
 - (1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.
 - (2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.
- (m) Facility Restoration--Late one year or more--a restoration fee:
 - (1) Cancelled registration--a fee equal to the facility renewal fee.
 - (2) Expired registration--a fee that is double the facility renewal fee.

Source Note: The provisions of this §651.1 adopted to be effective August 18, 1995, 20 TexReg 5864; amended to be effective May 22, 1996, 21 TexReg 4225; amended to be effective August 16, 1996, 21 TexReg 7381; amended to be effective December 17, 2000, 25 TexReg 12394; amended to be effective September 1, 2001, 26 TexReg 3747; amended to be effective March 4, 2002, 27 TexReg 1496; amended to be effective June 2, 2002, 27 TexReg 4571; amended to be effective January 1, 2004, 28 TexReg 11095; amended to be effective December 2, 2004, 29 TexReg 11035; amended to be effective September 1, 2005, 30 TexReg 4834; amended to be effective October 12, 2006, 31 TexReg 8369; amended to be effective January 1, 2010, 34 TexReg 9212; amended to be effective January 1, 2011, 35 TexReg 11258; amended to be effective February 14, 2013, 38 TexReg 644.

§651.3. Administrative Services Fees.

- (a) Verification/Transfer of Licensure--\$50.

- (b) Duplicate/Replacement License--\$30.
- (c) Duplicate of Facility Registration Certificate--\$30.
- (d) Reinstatement of Suspended or Revoked License--\$50.
- (e) Insufficient Funds Check Fee--\$25.
- (f) ACH Return Fee--\$25.
- (g) Preliminary Criminal History Evaluation Letter--\$50.

Source Note: The provisions of this §651.3 adopted to be effective August 16, 1996, 21 TexReg 7381; amended to be effective January 1, 2004, 28 TexReg 11095; amended to be effective September 1, 2005, 30 TexReg 4835; amended to be effective January 1, 2010, 34 TexReg 9212; amended to be effective February 14, 2013, 38 TexReg 644.